

statement required under section 242.58 for the prior fiscal year;

“Net Income” means Net Income for for-profit entities; Excess of Revenues over Expenses for not-for-profit entities; and Excess of Revenues over Expenses before Capital Grants, Contributions, and Additions to Permanent Endowment for governmental entities; and

“Equity financing ratio” means (Equity less any assets excluded from the mortgaged property)/(total assets less any assets excluded from the mortgaged property). Equity is defined as Equity for a for-profit entity, Total Net Assets for not-for-profit entities, and Total Net Assets for governmental entities.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35922, June 25, 2008; 78 FR 8341, Feb. 5, 2013]

§ 242.2 Program financial self-sufficiency.

The Commissioner shall administer the Section 242 program in such a way as to encourage financial self-sufficiency and actuarial soundness; i.e., to avoid mortgage defaults and claims for insurance benefits in order to protect the mortgage insurance fund.

§ 242.3 Encouragement of certain programs.

The activities and functions provided for in this part shall be carried out so as to encourage provision of comprehensive health care, including outpatient and preventive care as well as hospitalization, to a defined population, and in the case of public and certain not-for-profit hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay.

§ 242.4 Eligible hospitals.

(a) The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital, the substantial rehabilitation (or replacement) of an existing hospital, the limited rehabilitation of an existing hospital, the acquisition of an existing hospital, or the refinancing of the capital debt of an existing hospital

pursuant to Section 223(a)(7) or Section 223(f).

(b) This part applies only to applications for FHA mortgage insurance submitted after a pre-application meeting (as defined in § 242.1) with HUD that occurred on and after January 28, 2008. HUD's regulations and practices prior to January 28, 2008 apply to applications for FHA mortgage insurance submitted after a pre-application meeting that occurred before January 28, 2008.

[72 FR 67546, Nov. 28, 2007, as amended at 78 FR 8341, Feb. 5, 2013]

§ 242.5 Eligible mortgagees/lenders.

The lender requirements set forth in 24 CFR part 202 regarding approval, recertification, withdrawal of approval, approval for servicing, report requirements, and conditions for supervised mortgagees, nonsupervised mortgagees, investing mortgagees, and governmental and similar institutions, apply to these programs.

§ 242.6 Property requirements.

The mortgage, to be eligible for insurance, shall be on property located in a state, as defined in § 242.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

- (a) A fee simple title;
- (b) A lease for not less than 99 years that is renewable; or
- (c) A lease having a term of not less than 50 years to run from the date the mortgage is executed.

§ 242.7 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of 90 percent of HUD's estimate of the replacement cost of the hospital, including the equipment to be used in its operation when the proposed improvements are completed and the equipment is installed.

§ 242.8 Standards for licensure and methods of operation.

The Secretary shall require satisfactory evidence that the hospital will be

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located in a state or political subdivision of a state with reasonable minimum standards of licensure and methods of operation for hospitals, and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.

§ 242.9 Physician ownership.

Ownership of an interest in the mortgagor by physicians or other professionals practicing in the hospital is permitted within limits determined by HUD to avoid insurance risks that may be associated with such ownership. The Commissioner shall determine if the proposed mortgagor will be at low risk for violation of regulations of the U.S. Department of Health and Human Services, other federal regulations, and state regulations governing kickbacks, self-referrals, and other issues that could increase the risk of eventual default. The Commissioner's determination shall be based on an unqualified legal opinion as to compliance with applicable federal law, among other considerations.

§ 242.10 Eligible mortgagors.

The mortgagor shall be a public mortgagor (i.e., an owner of a public facility), a private nonprofit corporation or association, or a profit-motivated mortgagor meeting the definition of "hospital" in § 242.1. The mortgagor shall be approved by HUD and, except in those cases where the hospital is leased as permitted in § 242.72, shall possess the powers necessary and incidental to operating a hospital. Eligible proprietary or profit-motivated mortgagors may include for-profit corporations, limited partnerships, and limited liability corporations and companies, but may not include natural persons, joint ventures, and general partnerships. Any proposed mortgagor must demonstrate that it has a continuity of organization commensurate with the term of the mortgage loan being insured. For new organizations, or those whose continuity is necessarily dependent upon an individual or individuals, broad community participation is required.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35922, June 25, 2008]

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§ 242.11 Regulatory compliance required.

An application for insurance of a mortgage under this part shall be considered only in connection with a hospital that is in substantial compliance with regulations of the Department of Health and Human Services and the regulations of the applicable state governing the operation and reimbursement of hospitals. A hospital that is under investigation by any state or federal agency for statutory or regulatory violations is not eligible so long as the investigation is unresolved, unless HUD determines that the investigation is minor in nature; that is, the investigation is unlikely to result in substantial liabilities or to otherwise substantially harm the creditworthiness of the hospital.

§ 242.13 Parents and affiliates.

As a condition of issuing a commitment, HUD may require corporate parents, affiliates, or principals of the proposed mortgagor to provide assurances, guarantees, or collateral to protect HUD's interests. The Commissioner may also require financial and operational information on the parent, other businesses owned by the parent, or affiliates of the proposed mortgagor and may also require a parent or affiliate to be regulated by HUD as to certain actions that could impact on the insurance of a mortgage loan for the benefit of the hospital.

§ 242.14 Mortgage reserve fund.

As a condition of issuing a commitment, HUD shall require establishment of a Mortgage Reserve Fund (MRF). The mortgagor shall be required to make contributions to the MRF such that, with fund earnings, the MRF will build to one year of debt service at 5 years following commencement of amortization, increasing thereafter to 2 years of debt service on and after 10 years following commencement of amortization according to a schedule established by HUD, unless HUD determines that a different schedule of contributions is appropriate based on the mortgagor's risk profile, reimbursement structure, or other characteristics. In particular, hospitals that receive cost-based reimbursement may